

Alcohol and Tobacco Tax and Trade Bureau, Treasury

§ 41.60

exchanged for cigars may be considered as part of the sale price. See § 40.22(b) of this chapter for information on determining the sale price in special cases.

[T.D. ATF-420, 64 FR 71944, Dec. 22, 1999; T.D. ATF-422, 64 FR 71948, Dec. 22, 1999; T.D. ATF-422a, 65 FR 15058, Mar. 31, 2000; T.D. ATF-460, 66 FR 39093, July 27, 2001]

LIABILITY FOR AND PAYMENT OF TAXES

§ 41.40 Persons liable for tax.

The importer of tobacco products or cigarette papers and tubes will be liable for the internal revenue taxes imposed thereon by 26 U.S.C. 5701 or 7652: *Provided*, That tobacco products or cigarette papers or tubes (other than those previously exported and returned) imported or brought into the United States, may be released from customs custody without payment of tax, for delivery to the proprietor of an export warehouse, to a manufacturer of tobacco products, or to a manufacturer of cigarette papers or tubes (except for tobacco products), if such articles are not put up in packages (see § 41.11). Under these circumstances the transferee will become liable for the internal revenue tax on such articles upon release from customs custody and the importer will thereupon be relieved of the liability for such tax. If the transferee is also the importer, then the importer will not be relieved of the liability for such tax.

(Aug. 16, 1954, Chapter 736, 68A Stat. 907, as amended (26 U.S.C. 7652); sec. 201, Pub. L. 85-859, Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. ATF-422, 64 FR 71948, Dec. 22, 1999. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

§ 41.41 Determination and payment of tax.

Tobacco products and cigarette papers and tubes, imported or brought into the United States, on which internal revenue taxes are due and payable, must not be released from customs custody until such taxes have been determined and paid.

(68A Stat. 907, as amended, 72 Stat. 1417; 26 U.S.C. 7652, 5703)

[T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

EXEMPTIONS FROM TAXES AND PERMITS

§ 41.50 Exemptions.

The Harmonized Tariff Schedule of the United States (19 U.S.C. 1202) and Customs Regulations, 19 CFR, chapter I, provide for certain exemptions from internal revenue taxes with respect to tobacco products and cigarette papers and tubes imported into the United States. These exemptions include, but are not limited to, certain importations in passengers' baggage, for use of crew members, and by foreign officials. Those persons importing tobacco products and cigarette papers or tubes as described in this section are not required to obtain a permit.

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 52 FR 43194, Dec. 1, 1986; T.D. ATF-284, 54 FR 12190, Mar. 24, 1989; T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

ASSESSMENT OF TAXES

§ 41.60 Assessment.

Whenever any person required by law to pay internal revenue tax on tobacco products or cigarette papers or tubes fails to pay such tax, the tax shall be ascertained and assessed against such person, subject to the limitations prescribed in 26 U.S.C. 6501. The tax so assessed shall be in addition to the penalties imposed by law for failure to pay such tax when required. Except in cases where delay may jeopardize collection of the tax, or where the amount is nominal or the result of an evident mathematical error, no such assessment shall be made until and after notice has been afforded such person to show cause against assessment. The person will be allowed 45 days from the date of such notice to show cause, in writing, against such assessment.

(72 Stat. 1417; 26 U.S.C. 5703)

[T.D. 6871, 31 FR 41, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975, and amended by T.D. ATF-48, 44 FR 55855, Sept. 28, 1979; T.D. ATF-232, 51 FR 28084, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986]

§41.62

27 CFR Ch. I (4–1–11 Edition)

CUSTOMS' COLLECTION OF TAXES

§41.62 Customs' collection of internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States.

Internal revenue taxes on tobacco products and cigarette papers and tubes, imported or brought into the United States, which are to be paid to the Port Director of Customs or other authorized customs employee, in accordance with this part, must be collected, accounted for, and deposited as internal revenue collections by the Port Director of Customs, in accordance with customs procedures and regulations.

[T.D. ATF-422, 64 FR 71949, Dec. 22, 1999]

§41.63 Payment of tax by electronic fund transfer.

(a) Each importer who was liable, during a calendar year, for a gross amount equal to or exceeding five million dollars in taxes on cigars, cigarettes, cigarette papers, and cigarette tubes combining tax liabilities incurred under this part and part 40 of this chapter, shall use a commercial bank in making payment by electronic fund transfer (EFT) of such taxes during the succeeding calendar year. Payment of such taxes by cash, check, or money order is not authorized for an importer who is required, by this section, to make remittances by EFT. For purposes of this section, the dollar amount of tax liability is defined as the gross tax liability on all taxable withdrawals and importations (including similar products brought into the United States from Puerto Rico or the Virgin Islands) during the calendar year, without regard to any drawbacks, credits, or refunds, for all premises from which such activities are conducted by the taxpayer.

(b) For the purposes of this section, a taxpayer includes a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place it appears in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regula-

tions. Also, the rules for a "controlled group of corporations" apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of determining who is required to make remittances by EFT.

(c) For the purposes of this section, (1) electronic fund transfer or EFT means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer of magnetic tape, so as to order, instruct, or authorize a financial institution to either debit or credit an account, in accordance with procedures established by the U.S. Customs Service, and (2) electronic fund transfer or EFT does not have the meaning defined in §41.11 for use elsewhere in this part.

(d) An importer who is required by this section to make remittances by EFT, shall make the EFT remittance in accordance with the requirements of the U.S. Customs Service.

(Act of August 16, 1954, 68A Stat. 775, as amended (26 U.S.C. 6302); Sec. 202, Pub. L. 85-859, 72 Stat. 1417, as amended (26 U.S.C. 5703))

[T.D. ATF-245, 52 FR 534, Jan. 7, 1987, as amended by T.D. ATF-384, 61 FR 54095, Oct. 17, 1996. Redesignated and amended by T.D. TTB-16, 69 FR 52424, 52425, Aug. 26, 2004]

Subpart E—Packages

§41.71 Package.

All tobacco products, cigarette papers and tubes, except as provided in §41.75, shall, before removal subject to internal revenue tax, be put up in packages which shall be of such construction as will securely contain the articles therein and maintain the notice thereon as required by this subpart. No package of tobacco products or cigarette papers or tubes shall have contained in, attached to, or stamped, marked, written, or printed thereon (a) any certificate, coupon, or other device purporting to be or to represent a ticket, chance, share, or an interest in, or